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No. 85-546

Supreme Court U.S.

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In The
Supreme Court of the United States
October Term, 1985

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UNITED STATES OF AMERICA, PETITIONER,

v.

FLORENCE BLACKETTER MOTTAZ, ETC.,
RESPONDENT.

—0—

On Writ of Certiorari
To The United States Court of Appeals
For The Eighth Circuit

—0—

**BRIEF OF THE NAVAJO TRIBE OF INDIANS
AS AMICUS CURIAE IN SUPPORT OF
RESPONDENT MOTTAZ**

—0—

PAUL E. FRYE
Counsel of Record
200 Lomas Blvd., N.W.
Suite 815
Albuquerque, NM 87102
(505) 247-9592

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INTEREST OF THE AMICUS CURIAE

The Navajo Tribe of Indians is a federally-recognized Indian tribe with both proprietary and sovereign interests in its territory within the states of Arizona, Utah, and New Mexico. *See, Kerr-McGee Corp. v. Navajo Tribe of Indians*, — U.S. —, 105 S. Ct. 1900 (1985).

Although most of the Navajo Indian country has remained as land held in trust by the United States for the Navajo Tribe as a whole, a portion of the Navajo reservation was allotted to individual tribal members in the early part of this century, as required by section 25 of the Act of May 29, 1908, ch. 216, 35 Stat. 444, 457. In addition, public domain lands adjacent to the Navajo reservation were granted in trust to members of the Navajo Tribe under section 4 of the General Allotment Act.¹ These lands are administered for the federal government by the Eastern Navajo Agency of the Bureau of Indian Affairs. The allottees in this area have maintained their tribal relations, and governmental services are provided primarily by the Navajo Tribe. The Office of Hearings and Appeals of the Department of the Interior has determined that all of the allotments, in both the 1908 reservation and the remainder of the Eastern Navajo Agency, are subject to the civil and regulatory jurisdiction of the Navajo Tribe. Thus, the Navajo Tribe of Indians is now the beneficial owner of fractional beneficial interests in many trust allotments, pursuant to the "escheat" provisions of the Indian Land Consolidation Act,² and has a reversionary interest in all allotments made within Navajo Indian Country.³ The Tribe's present fractional ownership of allotments, its

¹Act of Feb. 8, 1887, ch. 119, § 4, 24 Stat. 389; 25 U.S.C. § 334.

²Pub. L. 97-459, Title II, § 207, Jan. 12, 1983, 96 Stat. 2519, amended Pub. L. 98-608, § 1(4), Oct. 30, 1984, 98 Stat. 3172; 25 U.S.C. § 2206.

³The Navajo Tribe is aware that the issue of the constitutionality of 25 U.S.C. § 2206 with respect to Sioux allotments is
(Continued on following page)

reversionary interests in the approximately 6,000 trust allotments in New Mexico, and its unique relationship with tribal member-allottees give the Tribe significant interests in preserving the Congressional plan for protection of Indian allotted lands.

That continued adherence to the Congressional scheme is needed is shown by two cases of the United States Court of Appeals for the Tenth Circuit. In *Vicenti v. United States*, 470 F.2d 845 (10th Cir. 1972), *cert. dis'd.* 414 U.S. 1057 (1973), individual Navajo allottees sued to recover possession of trust allotments which executive officers of the United States had purported to grant to a non-Indian rancher some twenty-three years earlier. The trial judge, while determining that 25 U.S.C. §§ 345-346 did not grant jurisdiction for recovery of money damages against the United States, entered judgment vesting exclusive beneficial title in the Navajo allottees, noting that the executive officers within the Department of the Interior had

(Continued from previous page)

before this Court in *Hodel v. Irving*, No. 85-637. The Eighth Circuit's decision, *Irving v. Clark*, 758 F.2d 1260 (8th Cir. 1985)—which the Navajo Tribe finds difficult to square with the reasoning of *Northern Cheyenne Tribe v. Hollowbreast*, 425 U.S. 649 (1976)—noted that the allotments were in the nature of a bargain, *Irving, supra*, at 1268, and that the bargain struck with the Sioux included enforceable expectations that the allottees would be able to control the disposition of the allotments at death. *Id.*, at 1268-69 and 1266 n.10. No such promises were made to the allottees in the 1908 reservation or other areas in the Eastern Navajo Agency. Thus, regardless of the outcome of *Hodel v. Irving*, 25 U.S.C. § 2206 will not invade constitutionally protected rights of Navajo allottees. See, Kornstein, *Inheritance: A Constitutional Right?* 36 Rut. L. Rev. 741, 789-91 (1984), listing decisions in forty-nine of the fifty states, and the District of Columbia, which hold that there exists no natural or inherent right to inheritance.

perpetrated a "cruel hoax" against the Navajos. *See, id.*, at 847. The trial court's judgment was affirmed.

More recently, in *Begay v. Albers*, 721 F.2d 1274 (10th Cir. 1983), the Tenth Circuit addressed the issue of whether the approval by employees of the BIA of forged deeds to allotments effectively terminated the trust status of the allotted lands, such that the actions were barred by statutes of limitations.⁴ The Tenth Circuit correctly held that the approvals of forgeries by the BIA officials were absolutely null and void,⁵ and that title to the allotments—despite the approval of the 1946 forgeries—had "remained in the United States in trust for [the allottees'] use and benefit."

Non-Indians, often in conjunction with BIA employees, have been able to perpetrate such "cruel hoaxes" on Navajo allottees because of the extremely low educational level of allottees in Navajo Indian country. Despite the promises made in Article VI of the Treaty of 1868,⁶ the federal government has made no serious attempt to provide schooling in Navajo Indian country until the 1960's.⁷ Nor has

⁴Notably, the Justice Department, although it vigorously defended the action in the trial court, supported the allottees in the Court of Appeals once a factual finding had been made by the trial courts that the deeds had been forged. *See, Cohen, Handbook of Federal Indian Law* (1982 ed.) at 315 & n. 277.

⁵*See, 25 U.S.C. § 348.*

⁶" . . . the United States agrees that, for every thirty children between said ages [of six and sixteen] who can be induced or compelled to attend school, a house shall be provided, and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher."

⁷Indeed, a report of Special Agent Donaldson which noted the "default" of the government's obligation to educate Navajos was included in the legislative history of the Indian Appropriations bill which was passed with the provisions of what is now 25 U.S.C. § 345. 26 Cong. Rec. 7703 (July 19, 1894). It had been stated earlier that "[i]n other cases, like that of the Navajoe tribe, with 3,000 children, they have only one school." 26 Cong. Rec. 5926 (June 7, 1894).

the state of New Mexico provided schooling to Navajos.⁸ As a consequence, the Navajo allottees are easy prey for those who would use trickery to separate them from their trust property, and then convince them that their remonstrances will be futile, because of BIA approval. *See, e.g., New Mexico Navajo Ranchers Association v. I.C.C.*, 702 F.2d 227, 231 (1983), where the court of appeals summarized the allegations of misrepresentations by agents of the Star Lake Railroad (a subsidiary of the Santa Fe-Southern Pacific Railway Company) used to induce allottees to sign right-of-way consent forms.⁹

The low education level of adult Indians, the sometimes staggering workload imposed on BIA officials, and the willingness of some unscrupulous persons and business entities to exploit these circumstances demonstrate the importance of preserving the Congressional plan regarding protection of allotted lands from the consequences of actions taken in violation of federal law. It cannot be emphasized enough that the rights sought to be vindicated by Respondent Mottaz are not simply the proprietary rights of the allottee, but governmental rights of the United States. *See, e.g., Heckman v. United States*, 224 U.S. 413, 437-38 (1912). And it is Congress, not the Executive Branch, with plenary power over Indian lands. *Begay v. Albers, supra*, 721 F.2d at 1281, citing *Warren Trading Post Co. v. Arizona Tax Commission*, 380 U.S. 685 (1965), and *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903). The position taken by the Department of Justice in this litigation is inconsistent with the national interest.

⁸See, *Ramah Navajo School Bd. v. Bureau of Revenue*, 458 U.S. 832, 834 n.1 (1982), referring to the "tribal children abandoned by the State."

⁹This massive fraud, involving over 400 allottees and heirs to allotments, would have likely gone unnoticed, had an allottee who had once been a state senator not been present at a meeting where it was suggested that allottees could face jail sentences if they did not consent to the grant of a right-of-way.

The attempt of the Justice Department and of the American Land Title Association ("ALTA") to ignore the special body of Indian law enacted by Congress should not be honored. The fundamental interests of the United States, as set forth by Congress, are entirely consistent with those of Respondent Mottaz, and are not—as suggested by the Justice Department and ALTA—consistent with the validation of void actions of executive officers by the operation of general statutes of limitations.

This brief, then, shall consider the Congressional plan for allotted lands and how the Congressional intent would be wholly thwarted by adopting the position taken by the Justice Department herein.

SUMMARY OF ARGUMENT

Subject matter jurisdiction in actions by allottees to protect their interests in trust property is conferred on the federal district courts by 25 U.S.C. § 345. This conclusion is compelled by the plain language of § 345, its legislative history, and eighty years of decisions of this Court and the Courts of Appeals.

No statute of limitations will bar actions by allottees to protect their beneficial ownership or possessory interests in trust land. The Congress has consistently manifested its intention that such actions against the United States not be precluded by the operation of statutes of repose. The same reasoning—embraced by all of the Justices—which led to the determination that "[t]here is no federal statute of limitations governing federal common law actions by Indians to enforce property rights"¹⁰ leads

¹⁰*County of Oneida v. Oneida Indian Nation*, — U.S. —, 105 S. Ct. 1245, 1255 (1985). See, *id.*, at 1263.

almost inescapably to the conclusion that no federal statute of limitations bars an allottee's claim for possessory or beneficial ownership rights in a trust allotment.

The statutes invoked in the brief of the United States do not apply, in light of the national interest expressed by Congress in protecting trust lands of Indian allottees. Indeed, 28 U.S.C. § 2409a is by its very terms inapplicable. Application of the six-year limitations period of 28 U.S.C. § 2401(a) would both frustrate the Congressional purpose and lead to absurd results.

The decision below, remanding the matter for factual findings, is proper. If the actions of the executive officers in purporting to terminate Mrs. Mottaz' interest in the allotment were contrary to the Congressional plan, they are void. If the purported conveyance was thus void, Mrs. Mottaz retains her beneficial interest in the land, and no statute of limitations is applicable with respect to her claim for beneficial interests in the land.

ARGUMENT

I. ACTIONS FOR ALLOTMENTS UNDER 25 U.S.C. § 345 INCLUDE ACTIONS TO PROTECT THE INTERESTS OF THE ALLOTTEE AFTER THE ACQUISITION OF THE ALLOTMENT.

A. Both The Language Of 25 U.S.C. § 345 And Settled Rules of Construction Compel The Conclusion That Actions Brought Pursuant To 25 U.S.C. § 345 Are Not Limited To Actions To Obtain Allotments In The First Instance.

The inquiry into the jurisdictional grant of 25 U.S.C. § 345 must, of course, begin with the language of the statute itself. *See, e.g., Watt v. Alaska*, 451 U.S. 259, 265

(1981). The language of 25 U.S.C. § 345 includes the following:

All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act or under any grant made by Congress, *or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled* by virtue of any Act of Congress, may commence and prosecute *or defend*¹¹ any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States

(Emphasis added.) Congress thus included in the jurisdictional grant of § 345 not only actions for allotments in the first instance, but also actions to redress unlawful exclusions from allotments previously acquired. Consent by the United States to suit in all actions authorized in § 345 is found in 25 U.S.C. §§ 345 and 346.¹²

The construction of 25 U.S.C. § 345 offered by the Justice Department herein would violate at least three fundamental rules of statutory construction. First, the brief of the United States must ignore the plain language used by Congress: *i.e.*, "persons . . . who claim to have been unlawfully . . . excluded from any allotment *or* any parcel of land to which they claim to be entitled" There are undeniably two types of land encompassed in the quoted

¹¹See, *United States v. Fairbanks*, 171 F. 337, 338 (8th Cir. 1909), *aff'd* 223 U.S. 215 (1912).

¹²Section 345 requires that "in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant." Section 346 provides for service of the petition on the Attorney General and the United States attorney, and it allows the United States attorney to file a "notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever of the Government in the premises"

language: lands which have been allotted and lands to which Indians merely "claim to be entitled."

Second, the construction offered by the Justice Department would collapse the phrase "any allotment or any parcel of land to which they claim to be entitled" to simply "any parcel of land to which they claim to be entitled." In contrast to the approach of the Justice Department, this Court has consistently held that a federal statute must be construed so that no part of it is rendered insignificant or surplusage. *E.g., Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979):

In construing a statute we are obliged to give effect, if possible, to every word Congress used. * * * Canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise

(Citation omitted.)

Third, the strained and crabbed construction offered in the Brief of the United States would render largely hollow the right of an allottee to the "quiet possession" of her allotment.¹³ The allottee, under the theory of the Justice Department, could bring suit against the United States to obtain the allotment initially, but would be unable to protect her beneficial rights, at least as against the United States,¹⁴ from that day forward. Not only would this construction be inconsistent with the language of § 345, as shown above, but it would also violate the "eminently sound and vital canon" of statutory construction that statutes passed for the benefit of Indians are to be liberally

¹³See, *New Mexico Navajo Ranchers Association v. I.C.C.*, 702 F.2d 227, 233 (D.C. Cir. 1983).

¹⁴The Justice Department would apparently allow Indian allottees to sue to recover possession of allotments from private parties (presumably, grantees of the United States) regardless of the passage of time, but not the United States itself. See, Brief of the United States, at p. 43, n. 22. Such a suggestion—to subject a good faith purchaser to suit while immunizing a trustee in possession—finds no support in law, policy or equity.

construed and all doubts are to be resolved in the Indians' favor. *See, Northern Cheyenne Tribe v. Hollowbreast*, 425 U.S. 649, 655 n. 7 (1976). As the Solicitor has recognized:

It is familiar law that allotment acts should be construed in view of their purpose to promote the welfare of the Indian wards. *Levindale Zinc Mining Co. v. Coleman* (241 U.S. 432, 437).

Fort Peck Allotments, I Op. Sol. 564, 565 (1935). *Accord*, e.g., *Antoine v. United States*, 637 F.2d 1177, 1179 (8th Cir. 1981). *See, United States v. Reily*, 290 U.S. 33, 39 (1933).

B. That 25 U.S.C. § 345 Supports Actions By Allottees To Protect Interests In Allotments Already Granted Is Supported Consistently By Almost Eighty Years Of Case Law.

As the United States concedes, the Eighth, Ninth and Tenth Circuits hold that § 345 provides subject matter jurisdiction in actions to protect interests in trust allotments previously granted. (Brief of the United States, at 42-43, n. 22.) That these appellate decisions correctly reflect the reach of § 345 is strongly supported by cases decided by this Court.

The brief of the United States erroneously relies on *First Moon v. White Tail*, 270 U.S. 243 (1926), for the proposition that § 345 only authorizes suits to compel allotments in the first instance. U.S. Br. at 12 and 40-41. *First Moon* held that 25 U.S.C. § 345 provides no subject matter jurisdiction over "disputes concerning the heirs of one who held a valid and unquestioned allotment." *Id.*, at 245. The result in *First Moon* was compelled by the Act of June 25, 1910,¹⁵ which conferred "final and conclusive" authority in the Secretary of the Interior to decide heirship disputes.

¹⁵Ch. 431, 36 Stat. 855; 25 U.S.C. § 372.

Prior to the Act of June 25, 1910, however, this Court had held differently.¹⁶ In *McKay v. Kalyton*, 204 U.S. 458 (1907), the Court determined that the federal courts, and not the state courts, had jurisdiction under 25 U.S.C. § 345 to adjudicate disputes among heirs concerning the rights to possession of a valid and unquestioned allotment. The Court's reasoning could not have been clearer:

By this provision [25 U.S.C. § 345], . . . the United States consented to submit its interest in the trust estate *and the future control of its conduct concerning the same* to the result of the decree of the courts of the United States The subsequent legislation of Congress, instead of exhibiting a departure from this policy, confirms it.¹⁷

Id., at 469 (emphasis added). *See, Gerard v. United States*, 167 F.2d 951, 954 (9th Cir. 1948).

Similarly, in *Heckman v. United States*, 224 U.S. 413 (1912), the Court discussed the ability of allottees to bring suit under § 345 in the context of an action brought by the United States to cancel conveyances of allotments executed by Cherokee Indians in violation of statutory restrictions.

¹⁶See, F. Cohen, *Handbook of Federal Indian Law* (1982 ed.), at 314 & n. 266.

¹⁷In contrast with the views that the 1901 amendment to the 1894 Act confirms a "limited scope" of § 345 (Brief of the United States, at 37), the *McKay v. Kalyton* Court said with respect to the 1901 amendment:

Nothing could more clearly demonstrate . . . the conception of Congress that the United States continued, as trustee, to have an active interest in the proper disposition of allotted Indian lands, and the necessity of its being made a party to controversies concerning the same, for the purpose of securing a harmonious and uniform operation of the legislation of Congress on the subject.

The suggestion made in argument that the controversy here presented involved the mere possession, and not the title, to the allotted lands is without merit, since the right of possession asserted of necessity is dependent upon the existence of an equitable title in the claimant under the legislation of Congress to the ownership of the allotted lands.
Id., emphasis added.

Quoting from *Re Heff*, 197 U.S. 488, 509 (1905), the Court stated:

In *United States v. Rickert*, 188 U.S. 432, 47 L. ed. 532, 23 Sup. Ct. Rep. 478, we sustained the right of the government to protect the lands thus allotted and patented from any encumbrance of state taxation. *Undoubtedly an allottee can enforce his right to an interest in the tribal or other property* (for that right is expressly granted)

Id., at 441 (emphasis added).

Decisions of this Court relied on in the Brief of the United States do not hold differently. As was noted above, *First Moon* concerned an heirship dispute which Congress in 1910 had entrusted to the "final and conclusive" jurisdiction of the secretary. *Arenas v. United States*, 322 U.S. 419 (1944), mandated the issuance of "trust patents"¹⁸ some 17 years after allotment schedules had been completed, and in spite of a change in policy by the Department of the Interior. The question of whether 25 U.S.C. § 345 encompassed actions seeking to protect beneficial rights in trust property already granted did not need to be, and was not, decided in *Arenas*. The third and final Supreme Court decision relied on by the United States is *Affiliated Ute Citizens v. United States*, 406 U.S. 128 (1972), where the plaintiff sought distribution of tribal minerals to mixed-blood Utes. The holding that 25 U.S.C. § 345 provided no subject matter jurisdiction for such an action was predicated on the fact that the mineral estate was not even alleged to have been subject to allotment nor appurtenant to any allotment. *Id.*, at 142-43. Thus, *Affiliated Ute* had no occasion to consider whether § 345 conferred jurisdiction over actions to protect either lands

¹⁸As the Court has noted, the term "trust patent" is a rather consistently used misnomer. *See, United States v. Rickert*, 188 U.S. 432, 436 (1903).

previously allotted or, indeed, interests "appurtenant" to such allotments.

The reasoning of *McKay v. Kalyton* and *Heckman v. United States* has been followed consistently for almost forty years by the Courts of Appeals. *See, e.g., Gerard v. United States*, 167 F.2d 951 (9th Cir. 1948), *Scholder v. United States*, 428 F.2d 1123 (9th Cir. 1970), *cert. den.* 400 U.S. 942 (1970), *Fontenelle v. Omaha Tribe*, 430 F.2d 143 (8th Cir. 1970), *Begay v. Albers*, 721 F.2d 1274 (10th Cir. 1983). And none of the Courts of Appeals decisions relied on by the United States (U.S. Br. at 42-43 n. 22) holds that suits to protect ownership or possessory interests in land previously allotted are unauthorized by 25 U.S.C. § 345. In *Coleman v. United States Bureau of Indian Affairs*, 715 F.2d 1156 (7th Cir. 1983), and *Harkins v. United States*, 375 F.2d 239 (10th Cir. 1967), the plaintiffs were members of the Five Civilized Tribes who sought only money damages, raising no "question about land titles." *Harkins*, at 242. *Vicenti v. United States*, 470 F.2d 845 (10th Cir. 1972), *cert. dis'd* 414 U.S. 1057 (1973), hardly supports the Justice Department here. The Tenth Circuit in *Vicenti*, while denying monetary relief against the United States, *affirmed* the judgment of the district court, vesting exclusive title to the allotments in the Indians. The *Vicenti* court restated with no apparent qualms that sections 345 and 346 were available "to clear any cloud on the title of the allotted lands," *id.*, at 847, and it cited to its decision in *Affiliated Ute Citizens of State of Utah v. United States*, 431 F.2d 1349 (1970), *aff'd* 406 U.S. 128 (1972), which had stated that 25 U.S.C. § 345 was "obviously intended to provide relief to the Indians entitled to possession of allotments and similar interests." Finally, the Ninth Circuit has expressly repudiated the dictum in *United States v. Eastman*, 118 F.2d 421 (9th Cir. 1941),

cert. den. 314 U.S. 635 (1941), relied on by the United States here. *Gerard v. United States*, 167 F.2d 951, 954 n. 3 (9th Cir. 1948).

The language of § 345, the rules of statutory construction, and eighty years of jurisprudence all support the view that Congress intended that Indian allottees be able to protect in federal courts their proprietary and possessory interests in allotments which had been granted to them. Neither the strained construction of § 345, nor the isolated snippets of legislative history, nor the series of dubious negative pregnants offered in the Brief of the United States provides significant support for reversing the consistent interpretation of § 345 by this Court and the Courts of Appeals.

II. THERE IS NO APPLICABLE STATUTE OF LIMITATIONS FOR ACTIONS BY ALLOTTEES TO PROTECT POSSESSORY INTERESTS IN TRUST ALLOTMENTS.

A. The Applicability Of General Statutes Of Limitations Must Be Determined With Reference To Congressional Policy, The Protections Guaranteed By The Allotment Statutes, And The Trust Relationship.

Indian lands had been allotted as early as 1633.¹⁹ Early experiments in the allotting of Indian lands generally ended in failure, in large part due to the rapid loss of the Indian lands.²⁰ *See*, Comm. on the Territories, H.R. Rep. No. 188, 45th Cong., 3d Sess. (1879); Com'r. Ind. Aff. Ann. Rep. Doc. No. 1, 45th Cong., 3d Sess. 442-45.

¹⁹F. Cohen, *Handbook of Federal Indian Law* (1982 ed.) at 129.

²⁰*Id.*, at 130.

However, “[p]ropONENTS OF allotment blamed the failure chiefly on the alienability of allotments, asserting that the results would differ if the lands were made inalienable.”²¹

As a result, the General Allotment Act provided that the United States hold the land “in trust for the sole use and benefit of the Indian” for a 25-year period. 25 U.S.C. § 348. *Poafpybitty v. Skelly Oil Co.*, 390 U.S. 365, 368 (1968). The new allotment system had a “dual purpose,” *id.*, at 369, to “safeguard Indian land and at the same time ‘to prepare the Indians to take their place as independent, qualified members of the modern body politic.’” *Ibid.*, quoting *Board of County Commissioners v. Seber*, 318 U.S. 705 (1943). During the trust period, the United States “retain[s] the power to scrutinize the various transactions by which the Indian might be separated from that property”²² and “possesses a supervisory control over the lands and may take appropriate measures to make sure that it inures to the sole use and benefit of the allottee and his heirs throughout the original or any extended period of restrictions.”²³

Although Congress initially determined that individual Indian allottees would require 25 years to become sufficiently educated and acculturated before restrictions on alienation would be unnecessary, it became apparent that additional time would be needed in many instances. *See, e.g.*, Act of June 21, 1906, c. 3504, 34 Stat. 326, 25

²¹*Ibid.* (Footnote omitted.)

²²*Poafpybitty v. Skelly Oil Co.*, 390 U.S. at 369.

²³*United States v. Bowling*, 256 U.S. 484, 487 (1921) (footnote omitted).

U.S.C. § 391; Act of February 26, 1927, c. 215, 44 Stat. 1247, 25 U.S.C. §§ 352a and 352b. *See, Heckman v. United States*, 224 U.S. 413 (1912), *United States v. Jackson*, 280 U.S. 183 (1930). The trust period has been “repeatedly extended.” *Poafpybitty*, at 368. Restrictions on alienation of allotments have been the cornerstone of the allotment system to this day, as Congress, in passing the Indian Reorganization Act,²⁴ extended indefinitely the trust period for all allotments. 25 U.S.C. § 462. *Poafpybitty*, at 368 n. 6, *Begay v. Albers*, 721 F.2d 1274, 1279 (10th Cir. 1983).

Until restrictions on alienation are validly removed, “any conveyance . . . of the lands set apart and allotted as herein provided, or any contract made touching the same . . . shall be absolutely null and void.” 25 U.S.C. § 348. Congress has provided no exception in § 348 for conveyances which are unlawful because of unauthorized actions of executive officers of the federal government. *See, United States v. Watashe*, 102 F.2d 428, 430-31 (10th Cir. 1939), *Bacher v. Patencio*, 232 F. Supp. 939, 941 (S.D. Cal. 1964), *aff’d* 368 F.2d 1010 (9th Cir. 1966).

Congress has allowed the sale and leasing of allotments by the allottees, under safeguards authorized by Congress. *See, e.g.*, 25 U.S.C. § 405, 25 U.S.C. § 396. But a sale or a lease of an allotment—even if approved by the Secretary of the Interior—is absolutely void without the informed consent of the allottees. *Mott v. United States*, 283 U.S. 747, 751 (1931), *Jennings v. Wood*, 192 F. 507,

²⁴Act of June 18, 1934, ch. 576, 48 Stat. 984; codified as amended at 25 U.S.C. §§ 461, 462, 463, 464, 465, 466-470, 471-473, 474, 475, 476-478, and 479.

508 (8th Cir. 1911) (cited with approval in *Mott*), *Begay v. Albers*, 721 F.2d 1274 (10th Cir. 1983). Neither the good faith of the conveyee nor the *bona fides* of the transaction may cure the nullity.²⁵ *United States v. Brown*, 8 F.2d 564 (8th Cir. 1925), *cert. den.* 270 U.S. 644 (1926), *Bacher v. Patencio, supra*, 232 F. Supp. at 941 (citing cases).

ALTA expressly, and the United States by inference, argue that the violation of the Congressional will alleged by Respondent Mottaz is no more significant than the “equally strong” federal policy embodied in general statutes of repose.²⁶ In *Squire v. Capoeman*, 351 U.S. 1 (1956), the Justice Department made a similar argument. There, an Indian allottee sought a refund from the United States of taxes paid on the sale of timber from his allotment, alleging that the imposition of such taxes violated 25 U.S.C. § 348. The Justice Department urged the Court

to view this case as an ordinary tax case without regard to the treaty, relevant statutes, congressional policy concerning Indians, or the guardian ward relationship between the United States and these particular Indians.

Id., at 5-6. Although agreeing that “exemptions to tax laws should be clearly expressed,” the Court rejected the argument of the government’s attorneys and held that the proceeds of the timber sales were not taxable.

Congress was delegated plenary authority over Indian affairs. U.S. Const., Art. I, § 8, cl. 3. This plenary authority extends to restricting the alienability of Indian allotments. *Williams v. Johnson*, 239 U.S. 414, 419-20

²⁵ALTA recognizes that such void conveyances cannot be given life by the passage of time. Brief of ALTA, at 20 n. 48.

²⁶Brief of ALTA, at 26. See Brief of the United States, at 44.

(1915). Plainly, the national interest—as consistently expressed by Congress—is seriously implicated in unauthorized conveyances of trust land. *Heckman v. United States*, 224 U.S. 413 (1912), *Poafpybitty v. Skelly Oil Co.*, 390 U.S. 365 (1968). Thus, the determination of whether an allottee may be dispossessed of her trust lands in violation of safeguards established by Congress must be considered in light of the “manifest policy of Congress to protect the Indians against loss of their lands.” *See, Drummond v. United States*, 131 F.2d 568, 570 (10th Cir. 1942) (per Phillips). This Congressional policy requires that general statutes of repose not bar actions by trust allottees seeking to protect interests in, or appurtenant to, their trust property.

B. The Eighth Circuit Properly Examined The Merits In Order To Determine The Applicability Of Statutes Of Limitations.

The Department of the Interior has long held the view that, so long as property is held in trust for an Indian, statutes of limitations will not bar the Indian from seeking to protect her rights in the trust property.²⁷ In

²⁷This discussion deals only with actions alleging a non-frivolous claim that the property at suit is held in trust by the United States for the plaintiffs, the unauthorized actions of executive officers of the United States notwithstanding. Thus, the following cases cited by the United States (Brief, at 32), where the rights being litigated were not rights to possession and beneficial ownership of trust property, are not germane here: *Loring v. United States*, 610 F.2d 649 (9th Cir. 1979) (damage action for taking of a right-of-way), *Christensen v. United States*, 755 F.2d 705 (9th Cir. 1985), *pet. for cert. pending* No. 85-372 (action predicated on failure to provide access to allotment over public lands), *Big Spring v. United States Bureau of Indian Affairs*, 767 F.2d 614 (9th Cir. 1985) (suit to redress alleged failure of allotting agents to select lands for ancestors prior to Act of Congress of June 30, 1919, § 10, 41 Stat. 3, 17). Similarly, other cases cited by

(Continued on following page)

the 1958 and 1966 editions of *Federal Indian Law*, at 543, the Department stated, with respect to Indian litigants:

Except with respect to restricted property, they may lose their rights because of laches, and the running of the statute of limitations.

(Emphasis added.) The authoritative 1942 *Handbook of Federal Indian Law*, by Felix Cohen, contains the same language, at 163.

The cases relied on in the Brief of the United States do not hold differently. For example, the court in *Capoeman v. United States*, 440 F.2d 1002 (Ct. Cl. 1971), cited in the government's brief at 31 & n. 18, recognized the "restricted property" exception which it characterized as relating "primarily to suits in which an Indian contests title to land presently or formerly restricted." *Id.*, at 1008. The *Capoeman* court noted that Congress had provided for the application of statutes of limitations in only a limited range of cases concerning trust allotments. *Ibid.* See, 25 U.S.C. § 347.

The other cases cited by the Justice Department also support the position that, as to trust land, no statute of limitations should apply. Cf., *Fort Mohave Tribe v. United States*, 210 Ct. Cl. 727, 728 (1926) ("The claim that limi-

(Continued from previous page)

ALTA are not relevant here because Congress expressly allowed for state statutes of limitations to govern actions for formerly restricted lands, *Schrimscher v. Stockton*, 183 U.S. 290, 296-97 (1902), *Wolfe v. Phillips*, 172 F.2d 481, 484 & n. 3 (10th Cir. 1949), cert. den. 336 U.S. 968 (1949), *Fife v. Bernard*, 186 F.2d 655, 661-62 (10th Cir. 1951), *Armstrong v. Maple Leaf Apartments, Ltd.*, 622 F.2d 466 (10th Cir. 1979), cert. den. 449 U.S. 901 (1980), or because statutory restrictions were validly removed on application of the Indian, *Dillon v. Antler Land Co. of Wyola*, 507 F.2d 940 (9th Cir. 1974), cert. den. 421 U.S. 992 (1975), or because Congress itself had terminated the trust status of the lands. *Dennison v. Topeka Chambers Indus. Dev. Corp.*, 724 F.2d 869 (10th Cir. 1984), affirming 527 F. Supp. 611 (D.Ks. 1981).

tations will not bar an express trust such as they allege here is unpersuasive. The facts do not show the existence of an express trust."), *Menominee Tribe of Indians v. U.S.*, 726 F.2d 718, 722 (Fed. Cir. 1984), cert. den. 105 S. Ct. 106 (1985) ("the statute of limitations applies to Indians the same as to anyone else" (except, perhaps, in the presence of an express trust . . .)) quoting from *Fort Mohave*). Plainly, the General Allotment Act and the "trust patents" constitute an express trust with respect to alienation of allotted lands. Cf., *United States v. Mitchell*, 445 U.S. 535, 543-44 (1980).²⁸ See generally, *Manchester Band of Pomo Indians, Inc. v. United States*, 363 F. Supp. 1238, 1249-50 (N.D. Cal. 1973), cited with approval in *United States v. Mitchell*, 463 U.S. 206, 226 n. 31 (1983).

Thus, the applicability of statutes of limitation requires an inquiry into whether the lands at suit are "restricted property" or whether restrictions had been removed in accordance with acts of Congress. This necessitates preliminary consideration of the merits of the allottee's claim, because, if the actions of the executive officers with respect to Mottaz' allotment violated the statute, they are absolutely void, see, *Ewert v. Bluejacket*, 259 U.S. 129, 138 (1922), *Hampton v. Ewert*, 22 F.2d 81, 92 (8th Cir. 1927), cert. den. 276 U.S. 623 (1928), *Begay v. Albers*, 721 F.2d 1274, 1281 (10th Cir. 1983), and because, if the conveyance was made without the consent of the allottee, it is

²⁸Where the beneficiary is in possession, statutes of limitations will not apply. Bogert, *The Law of Trusts and Trustees*, § 951 at 557-58 (2d ed. 1982). Here, possession of Mrs. Mottaz' allotment by the trustee should be considered possession by the beneficiary. *Nemkov v. O'Hare Chicago Corp.*, 592 F.2d 351, 356 n. 6 (7th Cir. 1979), citing *Lewis v. Hawkins*, 90 U.S. (23 Wall.) 119 (1875), as the location of Respondent's allotment in a national forest is not inconsistent with Congressional policy. See, 25 U.S.C. § 337.

void and wholly ineffective to terminate the trust status of the land. *Mott v. United States*, 283 U.S. 747, 751-52 (1931), *Board of Com'rs v. United States*, 100 F.2d 929, 933 (10th Cir. 1938), *mod. on other grds* 308 U.S. 343 (1939), *Begay v. Albers*, 721 F.2d 1274, 1278-80 (10th Cir. 1983). Were the rule otherwise, unauthorized government employees (including persons employed in the Department of Interior) could cause the national interest²⁹ to be compromised through their actions and through the mere passage of time, in derogation of the plenary authority of Congress in this area. *See, United States v. California*, 332 U.S. 19, at 27 and 39-40 (1947).

In sum, and assuming that Respondent Mottaz seeks to protect the beneficial ownership and possessory interests in her trust property,³⁰ it was appropriate for the Court of Appeals to require on remand that the district court determine if the purported conveyance violated applicable law and whether Respondent Mottaz consented to the sale. *See, Mottaz v. United States*, 753 F.2d 71, 75 (8th Cir. 1985). As the Court of Appeals indicated, *ibid.*,

²⁹*Heckman v. United States*, 224 U.S. 413, 437 (1912), *Poafpy-bitty v. Skelly Oil Co.*, 390 U.S. 365, 369-70 (1968).

³⁰The Navajo Tribe agrees with the United States that proof that the purported conveyance of Respondent's allotment was in excess of statutory authority would be inconsistent with recovery for a taking. *See, Brief of the United States*, at 26, n. 14. The litigation strategy of particular litigants, perhaps dictated by attorney fee considerations, should not be allowed to distort settled law regarding either individual Indian trust property or the law of what constitutes a compensable taking. Only Congress can authorize a taking of Indian lands. *See, U.S. v. Santa Fe Pac. R. Co.*, 314 U.S. 339 (1941). Much of the law concerning 25 U.S.C. § 345, it appears, has been decided on less than ideal pleadings. *See, Loring v. United States*, 610 F.2d 649 (9th Cir. 1979) (no jurisdictional allegation at all; court supplies § 345 as jurisdictional basis), *Mottaz v. United States*, 753 F.2d 71, 75 (8th Cir. 1985) (Mottaz' complaint "not particularly well-drafted;" court construes prayer for relief generously).

resolution of these questions will determine whether the land remains in trust. If the restrictions were validly removed in 1955, the statute will have run, and Mottaz "does not have a cause of action." *Ibid.* The remand, therefore is entirely consistent with federal law.³¹

C. Congress Has Not Enacted Any Statute Of Limitations Which May Be Applied In Actions To Protect Possessory Interests In Trust Allotments.

The Congress, the courts, and, indeed, the Solicitor for the Department of the Interior all agree that there is no statute of limitations applicable in actions involving possessory rights to trust lands. That Congress, except in one instance noted below, has not seen fit to impose time bars on Indian allottees seeking to protect possessory rights to trust land is probably explained by then-Attorney General Harlan F. Stone as resulting from "[t]he doctrine of fostering guardianship by a paternal government of its recognized wards and the disinclination to involve technical rules of law to the prejudice of Indian tribes or members thereof."³²

³¹The Tenth Circuit, in *Begay v. Albers*, 721 F.2d 1274 (1983), in an action under 25 U.S.C. § 345 regarding forged deeds, has employed a similar analysis as the Eighth Circuit. The Ninth Circuit also appears to recognize the correctness of the Mottaz approach in actions where there are non-frivolous allegations that a conveyance of trust land is void. *Big Spring v. U.S. Bureau of Indian Affairs*, 767 F.2d 614, 616-17 n. 1 (1985).

³²*Five Civilized Tribes of Indians—Income Tax Refund—Statute of Limitations*, 34 Op. A.g. 302, 304 (1924). Justice Stone's position, that general statutes of limitations should not bar claims for tax refunds by individual Indians who relied on the erroneous advice and actions of federal officials, has been adopted by the courts. *See, e.g., Dodge v. United States*, 362 F.2d 810, 813 (Ct. Cl. 1966), *Daney v. United States*, 247 F. Supp. 533, 535 (D.Ks. 1965), *aff'd* 370 F.2d 791 (10th Cir. 1966), *Nash v. Wiseman*, 227 F. Supp. 552 (W.D. Okla. 1963), *Clark v. United States*, 587 F.2d 465 (10th Cir. 1978).

This Court, in *County of Oneida v. Oneida Indian Nation*, — U.S. —, 105 S. Ct. 1245 (1985), recently analyzed the assertion that statutes of limitations barred a claim for tribal lands. The Court first held that “[t]here is no federal statute of limitations governing federal common law actions by Indians to enforce property rights.” *Id.*, S. Ct. at 1255.³³ The Court further held that “the borrowing of a state limitations period in these cases would be inconsistent with federal policy.” *Ibid.* The Court discerned the federal policy from the Trade and Intercourse Act of 1793, from a 1950 act of Congress (and its legislative history),³⁴ and from recent indications of Congress found in the enactment and successive extensions of a statute of limitations for ancient Indian trespasses. 28 U.S.C. § 2415.

The *Oneida* analysis, embraced by all of the Justices, compels the conclusion that federal statutes of limitations are also inapplicable to actions seeking to protect rights of possession and beneficial ownership in trust allotments. Much as the Nonintercourse Act has formed the foundation of the government’s policy regarding alienation of tribal lands, the restrictions on alienation in the General Allotment Act have been the cornerstone of Congressional policy with respect to allotments, as this Court has repeatedly recognized.

Furthermore, in 1902 Congress plainly indicated that the rights created in § 345 were subject to no limitations period. Soon after the enactment of what is now 25

³³The dissent agreed: “Of course, as the Court notes, there is no federal statute of limitations governing federal common law actions by Indians to enforce property rights.” *Id.*, S. Ct. at 1263.

³⁴See, *id.*, at 1255 and n. 14, discussing 25 U.S.C. § 233 and its legislative history.

U.S.C. § 345, heirs of Shawnee Indians who had sold restricted lands by deeds duly approved by the Secretary of the Interior more than thirty years previously had filed suits in ejectment against the conveyees, who had possessed the lands for many years and had constructed valuable improvement thereon.³⁵ A bill was introduced “to prevent this species of blackmail without in any way interfering with or preventing any legitimate and just claim.”³⁶ The bill, as amended,³⁷ became law on May 31, 1902, and is codified at 25 U.S.C. § 347. Section 347, made the limitations period established by state law applicable in actions for land “patented in severalty . . . under any treaty . . . where a deed has been approved by the Secretary of the Interior.”³⁸ Congress has passed no similar legislation with respect to other lands which may be claimed by Indian allottees.

The absence of a federal statute of limitations applicable in actions by Indians to protect rights to trust property is underscored by 28 U.S.C. § 2415. The legislative history of § 2415 shows, first, that actions brought to establish title to lands were not to be barred by § 2415, and second, that Congress neither believed nor intended that such actions were barred by *any* federal statute of limitations. *See, County of Oneida v. Oneida Indian Nation*, 105 S. Ct. 1245, 1255 (1985):

³⁵See, H.R. Rep. No. 1732, 57th Cong., 1st Sess. (1902).

³⁶S. Rep. No. 800, 57th Cong., 1st Sess. (1902).

³⁷The bill initially introduced only concerned lands patented to Shawnee Indians under an 1854 treaty, but was amended by the House to include lands patented in severalty under any treaty. 35 Cong. Rec. 5748 (May 21, 1902).

³⁸Even under 25 U.S.C. § 347, the limitations period does not begin to run until restrictions on alienation are validly removed. *Baldridge v. Caulk*, 110 Okla. 185, 237 P. 453 (1925), *McLish v. White*, 97 Okla. 150, 223 P. 348 (1924).

The legislative history of the 1972, 1977, and 1980 amendments demonstrates that Congress did not intend § 2415 to apply to suits brought by the Indians themselves, and that it assumed that the Indians' right to sue was not otherwise subject to any statute of limitations. Both proponents and opponents of the amendments shared these views.³⁹

Thus, Congress preserved all Indian actions "to establish the title to, or right to possession of, real or personal property." 28 U.S.C. § 2415(c).

³⁹In addition to the legislative history cited in *Oneida* at 1255-56, see, e.g., S. Rep. No. 96-569, 96th Cong., 2d Sess. 4 ("The statute of limitations does not bar an . . . individual Indian . . . from bringing a claim for title to lands"); S. Rep. No. 92-1253, 92d Cong., 2d Sess. 3 ("In other words claims against the United States would not be affected by this legislation."); H.R. Rep. No. 92-1267, at 4 and 7 (same); 118 Cong. Rec. 23966 (1972) (remarks of Senator Jackson, incorporating a Wall Street Journal article: "the expiration next week wouldn't affect Indian claims against the federal government to establish land title"). With respect to the recognition of the trust duty of the United States with respect to such actions to protect interests in trust allotments, see, e.g., S. Rep. No. 96-569, 96th Cong., 2d Sess. 9 ("A great majority of the thousands of Indian claimants are heirs of deceased allottees or trust patentees. * * * The United States, of course, has a responsibility to them just as it does to recognized tribes, bands or groups."); 123 Cong. Rec. 22512 (1977) (remarks of Mr. Udall):

I understand that some thought has been given to expanding the scope of the statute to include Indian title to land and to reducing the extension of time.

Mr. Chairman, there is no statute of limitations on claims of the United States based upon its title to lands While Indian lands are not Federal lands, the fee title to those lands is held by the United States in trust for the Indians. If there is no statute of limitations with respect to lands held by the United States for itself, there should be no statute with respect to lands which it holds in trust for the Indians.

See also, 123 Cong. Rec. 17498 (1977) (remarks of Mr. Danielson); 123 Cong. Rec. 17500 (1977) (remarks of Mr. Foley); 123 Cong. Rec. 22165-66 (1977) (remarks of Mr. Danielson); 123 Cong. Rec. 22503 and 22511 (1977) (remarks of Mr. Cohen).

In considering the effect of 28 U.S.C. § 2415(c), the Solicitor—consistent with the Department's position in its 1958 and 1966 editions of *Federal Indian Law*—opined that:

If individual Indians or a tribe were to institute litigation, they would be subject to the statute of limitations applicable to the general public *except with respect to actions to quiet the title to trust or restricted lands (if the statute were permitted to run in such cases it would conflict with federal statute prohibiting alienation of Indian lands)*.

Effect of 28 U.S.C. §§ 2415, etc., 80 I.D. 220, 221-22 (1972) (emphasis added).

Before the *Oneida* decision, the lower courts had held that statutes of limitations could not bar an Indian's claim for possession or beneficial ownership of trust property. See, e.g., *Confederated Salish and Kootenai Tribes v. Namen*, 380 F. Supp. 452 (D. Mont. 1974) *aff'd* 534 F.2d 1376 (9th Cir. 1976), *cert. den.* 429 U.S. 929 (1976), where the court held in favor of successors-in-interest of Indian allottees who asserted that the trust patents conveyed certain riparian rights. In applying federal common law, the court noted:

It is of course clear that there is no statute of limitations, and the doctrine of laches is not applicable.

Id., 380 F. Supp. at 466 n. 25. See also, *Schaghticoke Tribe of Indians v. Kent School Corp.*, 423 F. Supp. 780, 784-85 (D. Conn. 1976), *Narragansett Tribe, etc. v. So. R.I. Land Devel.*, 418 F. Supp. 798, 804-806 (D.R.I. 1976).

Despite the language and reasoning of *Oneida*, and despite the consistent view of the courts, the Congress and the Department of the Interior that actions brought by allottees to protect property rights in trust property are

not to be barred by laches⁴⁰ or any statute of limitation, the Brief for the United States asserts that 28 U.S.C. § 2409a(f), the 12-year statute of limitations in the Quiet Title Act, bars Respondent's action. The Quiet Title Act has no bearing on allottee claims to protect interests in trust property, however.

First, the United States will retain fee title to Respondent's allotment in any event.⁴¹ More important, of course, is that Congress specifically excepted Indian lands from the coverage of the Quiet Title Act. Congress could not have been clearer: "This section does not apply to trust or restricted Indian lands . . ." 28 U.S.C. § 2409a(a); *Block v. North Dakota*, 461 U.S. 273, 283 (1983). The reason for this exception is stated in the House and Senate Reports:

The federal government's trust responsibility for Indian lands is the result of solemn obligations entered into by the United States Government. The Federal Government has over the years made specific commitments to the Indian people through written treaties and through informal and formal agreements. The Indians, for their part, have often surrendered claims to vast tracts of land. President Nixon has pledged his administration against abridging the historic relationship

⁴⁰Although laches is not an issue here, ALTA cites two cases, *Felix v. Patrick*, 145 U.S. 317 (1892), and *Lemieux v. United States*, 15 F.2d 518 (8th Cir. 1926), cert. den. 273 U.S. 749 (1927), regarding the applicability of the doctrine of laches in Indian cases. In *Felix v. Patrick*, the Indians had severed their tribal relations and no longer enjoyed the fiduciary relationship with the United States with respect to their land. See, *Schagticoke Tribe*, 423 F. Supp. at 785 n. 7. *Lemieux* presented a unique fact situation: the Indian plaintiff in *Lemieux* sought to dispossess another Indian to whom a trust patent had been issued. Failure to apply laches would have, therefore, defeated the Congressional policy to protect the rights of the Indian wards as would the application of laches in the usual § 345 action.

⁴¹Cf., *Block v. North Dakota*, 461 U.S. at 291-92. See, *Pueblo of Taos v. Andrus*, 475 F. Supp. 359 (D.D.C. 1979).

between the Federal Government and the Indian without the consent of the Indians.

H.R. Rep. No. 92-1559, 92d Cong., 2d Sess. 13; S. Rep. No. 92-575, 92d Cong., 1st Sess. 4.

It cannot be seriously argued that the 92d Congress—cognizant of the trust relationship, the commitments to the Indians made in various agreements,⁴² and the historic federal-Indian relationship—when it said that the Quiet Title Act "does not apply to trust or restricted Indian lands" really meant that the Quiet Title Act not only applies in actions where Indians themselves seek to protect property interests in trust lands, but also imposes a limitations period on such actions where none existed previously. Indeed, this same 92d Congress extended the limitations period for historic trespass claims by Indians, excepting all actions for land title from even the extended limitations period of 28 U.S.C. § 2415. The Justice Department's construction would violate the language of the Quiet Title Act, the intent of Congress, the canon of construction to construe statutes in favor of Indian wards, and the canon of construction to strictly observe conditions to legislation waiving sovereign immunity.⁴³ Moreover, this Court has been unwilling to construe acts of Congress to diminish Indian rights in such a backhanded fashion.⁴⁴

The Justice Department stretches even further, positing that, if the 12-year limitations period of the Quiet Title Act doesn't apply, then the six-year period of 28 U.S.C.

⁴²Respondent's allotment was in the nature of such an agreement. See, *County of Thurston v. Andrus*, 586 F.2d 1212 (8th Cir. 1978), cert. den. 441 U.S. 952 (1979).

⁴³See, *Block v. North Dakota*, 461 U.S. 273, 287 (1983).

⁴⁴See, e.g., *Menominee Tribe v. United States*, 391 U.S. 404, 412-13 (1968).

§ 2401(a) does. Thus, in the Justice Department's view, non-Indians to whom the United States owes no duty of trust have twelve years to bring actions for real property, but Indian wards are barred from asserting beneficial title to trust lands after only six years. Statutes should be construed to avoid such absurd results. *See, e.g., United States v. Brown*, 333 U.S. 18, 26-27 (1948).

The United States seems to rely on language in *Federal Power Com'n v. Tuscarora Indian Nation*, 362 U.S. 99 (1960), for the proposition that general statutes of limitations apply to, *inter alia*, actions by Indians to protect interests in trust land. See Brief of United States, at 27 and 48. *Tuscarora* was a case involving land *not* held in trust for Indians. As Cohen notes, the broad language in *Tuscarora*⁴⁵ is limited "to situations where no special Indian rights were at issue, unless Congress clearly intended to infringe such rights."⁴⁶ Thus, in *Squire v. Capoeman*, 351 U.S. 1 (1956), the Court ruled that the general federal income tax did not reach capital gains from sales of timber of allotted lands, in view of the language and purpose of the General Allotment Act. *See also, United States v. Winnebago Tribe*, 542 F.2d 1002 (8th Cir. 1976), *Donovan v. Navajo Forest Products Industries*, 692 F.2d 709, 713 (10th Cir. 1982). This Court, moreover, has previously taken into consideration the national interest in the protection of the possessory rights of Indians in rejecting the application of a general statute of limitations. *Cramer v. United States*, 261 U.S. 219, 233-34 (1923) (general statute of limitations for suits brought by United States to annul patents inapplicable when United States sues to annul patents to protect possessory rights of Indians).

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⁴⁵A general federal statute "in terms applying to all persons includes Indians and their property interests." *Tuscarora*, at 116.

⁴⁶F. Cohen, *Handbook of Federal Indian Law* (1982 ed.), at 285.

CONCLUSION

Assuming that Respondent Mottaz' complaint is properly characterized as one seeking to protect her beneficial interests in trust property, no statute of limitations is applicable to bar the cause of action. If, however, Respondent asserts that there has been a compensable taking, her action is barred, because—in order for a taking of a trust allotment to have occurred—the actions of the executive branch must have been within their statutory authority, necessarily entailing voluntariness (and, thus, knowledge) on the part of Respondent at the time of the conveyance.

Not every case purportedly brought under 25 U.S.C. § 345 involves an Indian's attempt to protect interests in trust property. Actions have been brought under § 345 for rights-of-way on BLM lands and for money damages to redress takings. For those causes of action against the United States which in fact seek to protect interests in or appurtenant to trust property, however, it is clear that Congress has not imposed a time period within which such claims must be prosecuted.

Respectfully submitted,
 PAUL E. FRYE
 Counsel of Record
 200 Lomas Blvd., N.W.
 Suite 815
 Albuquerque, NM 87102
 (505) 247-9592

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